Arnold Walter Nursing and Rehabilitation Center *and* 1199 Service Employees International Union, United Healthcare Workers East. Cases 22–CA–180557 and 22–CA–186982

January 11, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel has renewed his motion for default judgment in this case pursuant to the Respondent's breach of a bilateral informal settlement agreement.[1] This settlement agreement, approved by the Regional Director for Region 22 on March 3, 2017, contained the following provision:

> PERFORMANCE—
>
> . . . .
>
> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the Complaint previously issued on December 29, 2016. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

On July 11, 2018,[2] the General Counsel reissued the consolidated complaint and properly served a renewed motion for default judgment on the Respondent and the Union. The Respondent filed an opposition to the motion on July 17. After learning that, due to an inadvertent error, he had not properly filed his renewed motion with the National Labor Relations Board on July 11, the General Counsel sought leave to file it beyond the time prescribed by the Board's Rules. The Respondent did not object. By letter dated August 24, the Board granted this request. On August 30, the General Counsel timely filed a response to the Respondent's opposition. On September 7, the Board issued an Order Transferring Proceeding to the Board.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

In the renewed motion for default judgment, the General Counsel contends that the Respondent breached the settlement agreement by failing to furnish the Union with information it requested in April 2016.[3] In its opposition, the Respondent contends that it provided the Union with responsive information. In support of its position, the Respondent attached the certification of compliance that it submitted to Region 22. The Respondent also argues that the Union did not indicate that the information it requested was necessary for negotiations. In his reply, the General Counsel argues that the Respondent still has not provided many of the requested documents, as specified in the Union's November 3, 2016 letter to the Respondent, which was set forth as an attachment to his reply.

The Respondent's opposition to the motion does not adequately dispute the General Counsel's assertion that it had failed to comply with the settlement agreement. Beyond citing to its certification of compliance, the Respondent only states that "information was provided on or about September 6, 2016 . . . [and] during the course of the negotiations." Full compliance with the settlement agreement, however, requires the Respondent to provide all of the requested information. Therefore, the Respondent's general claim that it provided information to the Union is insufficient to refute the General Counsel's detailed

[1] On June 29, 2018, the National Labor Relations Board issued a decision, reported at 366 NLRB No. 120, denying the General Counsel's original motion for default judgment pursuant to the Respondent's breach of the informal settlement agreement. The Board remanded the proceeding without prejudice to the Regional Director for Region 22.

[2] All subsequent dates are in 2018 unless otherwise noted.

[3] As discussed below in fn. 7, the General Counsel also asserts that the Respondent breached the settlement agreement by unreasonably delaying bargaining from spring 2017 to January 2018.

account of the Respondent's breach. Moreover, we reject the Respondent's argument that "the Union never stated it could not negotiate until certain information was received." When an information request concerns the terms and conditions of employment of bargaining unit employees, no special showing of relevance or necessity is required.[4] Because the Union had requested information that concerned terms and conditions of employment, it was not required to make any additional showing.

As noted above, the performance provision in the settlement agreement provides that "[t]he only issue that the Charged Party may raise before the Board [is] whether it defaulted on the terms of this Settlement Agreement." The Respondent has not shown that it has fully complied with that agreement. The settlement agreement further provides that, under such circumstances, "[t]he Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings." Therefore, in light of the undisputed assertions by the General Counsel that the Respondent has not provided all of the required information and has not complied with the terms of the settlement agreement, we find that the Respondent has failed to raise any material issue of fact warranting a hearing.[5] Accordingly, we grant the General Counsel's renewed Motion for Default Judgment and find, pursuant to the performance provision of the settlement agreement set forth above, that all of the allegations in the reissued complaint are true.[6]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation with an office and place of business in Hazlet, New Jersey, has been engaged in the operation of a nursing home and rehabilitation center providing inpatient medical care.

During the 12 months preceding the reissued complaint, a representative period, the Respondent, in conducting its business operations, derived gross revenues in excess of $100,000. During this same time period, the Respondent, in conducting its business operations, purchased and received goods valued in excess of $5000 directly from points outside of the State of New Jersey.

We find that at all material times the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Ben Schachter	--	Administrator
David F. Jasinski	--	Chief Negotiator

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees excluding registered nurses, office clerical employees, supervisors, watchmen and guards.

Since about June 2002, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from March 1, 2012 to June 30, 2016.

At all times since June 2002, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred, giving rise to these proceedings:

1. On March 29, 2016, the Union, by email, letter and facsimile, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

[4] See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 802−803 (2003) (listing types of information that "are presumptively relevant for purposes of collective bargaining and must be furnished upon request.").

[5] See, e.g., *Alaris at Hamilton Park Health Care Center*, 366 NLRB No. 90, slip op. at 1–2 (2018) (granting a motion for default judgment where the respondent failed to support its general denial that it had breached the settlement agreement by not providing all of the requested information); *Williamsville Suburban, LLC*, 365 NLRB No. 14, slip op. at 2 (2017) (same); *Bristol Manor Health Care Center*, 360 NLRB 38, 39 (2013) (same).

[6] See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994).

Based on this breach of the settlement agreement, the Respondent is additionally found to have violated Sec. 8(a)(5), as alleged in the reissued complaint, by unlawfully delaying negotiations following the Union's bargaining requests from about September 7, 2016, through December 2016. Having found this delayed-bargaining violation, we need not address the General Counsel's contention, which the Respondent denies, that the Respondent also breached the settlement agreement by unreasonably delaying bargaining from spring 2017 to January 2018. Any lingering dispute regarding the Respondent's obligation under our Order may be resolved in compliance.

2. About April 28, 2016, the Union, by email, letter and facsimile requested that the Respondent furnish it with the following information:

> (a) For each employee working in a bargaining unit position from January 1, 2014 through date of production, provide:
>
> (1) name;
> (2) date of hire;
> (3) job title;
> (4) current hourly rate of pay;
> (5) documents showing the regular hours of work from January 1, 2014 through the date of production;
> (6) overtime hours worked on a quarterly basis from January 1, 2014 through the date of production;
> (7) whether employee is no-frill or per diem;
> (8) whether the employee has opted out of health insurance coverage, pursuant to Article 28.10 of the collective-bargaining agreement, upon proof of coverage.
>
> (b) Payroll registers for all individuals working in classifications covered by the collective-bargaining agreement from July 1, 2015 through the date of production.
>
> (c) Gross bargaining unit payroll for 2014, 2015, and through the date of production.
>
> (d) Gross bargaining unit payroll for 2014, 2015, and through the date of production, excluding overtime.
>
> (e) Copies of work schedules for each department and shift from February 2016 through the date of production.
>
> (f) Documents showing all dates and hours worked by agency employees in bargaining unit positions from January 1, 2015 through the date of production.

3. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

4. On or about September 6, 2016, the Respondent, by U.S. Mail, partially responded to the Union's April 28, 2016 request for information described above in paragraph 2.

5. By email dated November 3, 2016, the Union informed the Respondent's agent Jasinski, that certain items of the information requested in the Union's April 28, 2016 information request, specifically items (a)(6), (b), (e), and (f) had not been provided by the Respondent.

6. Since about April 28, 2016 to date, the Respondent has failed and/or refused to furnish the Union with the information responsive to items (a)(6), (b), (e), and (f) of the Union's request for information described above in paragraph 2.

7. Since on or about April 28, 2016 until September 6, 2016, the Respondent unreasonably delayed in furnishing the Union with the information requested by the Union in items (a)(1), (2), (3), (4), (5), (7), (8), (c), and (d) as described above in paragraph 2.

8. On or about September 7, 2016, the Respondent met with the Union for the purposes of collective bargaining on behalf of the unit.

9. Since about September 7, 2016, through and including December 2016, the Union has by email requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

10. Since September 7, 2016, and continuing to date,[7] the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit by failing and refusing to schedule dates for bargaining.

CONCLUSION OF LAW

By the conduct described above in paragraphs 1 through 10, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with certain information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees and by unreasonably delaying in providing the Union with other such requested information, we shall order the Respondent to furnish the Union with the information it requested on April 28, 2016, that has not already been provided, specifically the information set forth above

[7] We interpret "and continuing to date" in par. 10 as referring to December 29, 2016, the date of the initial complaint.

in paragraph 2(a)(6), (b), (e), and (f) of this decision. In addition, we find that it violated Section 8(a)(5) and (1) of the Act by unreasonably delaying bargaining over the terms of a successor collective-bargaining agreement. Accordingly, we shall order the Respondent, on request, to bargain in good faith with the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Arnold Walter Nursing and Rehabilitation Center, Hazlet, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with 1199 Service Employees International Union, United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit by unduly delaying meetings.

(b) Refusing to bargain with the Union by failing and refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) Refusing to bargain with the Union by unreasonably delaying in providing the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(d). In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet at reasonable times and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees excluding registered nurses, office clerical employees, supervisors, watchmen and guards.

(b) Furnish to the Union in a timely manner the information requested by the Union on April 28, 2016, that has not already been provided, specifically the information set forth above in paragraph 2(a)(6), (b), (e), and (f) of this decision.

(c) Within 14 days after service by the Region, post at its Hazlet, New Jersey facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 2016.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 11, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with 1199 Service Employees International Union, United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit by unduly delaying meetings.

WE WILL NOT refuse to bargain with the Union by failing and refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT refuse to bargain with the Union by unreasonably delaying in providing the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL on request, meet at reasonable times and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees excluding registered nurses, office clerical employees, supervisors, watchmen and guards.

WE WILL furnish to the Union in a timely manner the information requested by the Union on April 28, 2016 that we have not already provided.

ARNOLD WALTER NURSING AND REHABILITATION CENTER

The Board's decision can be found at https://www.nlrb.gov/case/22-CA-180557 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.